

REGION 5 TRIBAL OPERATIONS COMMITTEE MEETING SUMMARY

U.S. EPA Region 5 ~ April 06, 2017

Agenda Items

- Welcome and Introductions
- Presentation of the Taimi Lynne Hoag Award for Environmental Stewardship
- R5TOC Administrative Business
- 2017 Transition at EPA Region 5
- Enbridge Consent Decree Update
- Reports from Tribal Partnership Groups
- Back Forty Mine
- Revisit R5TOC Organizational Structure
- American Indian Environmental Office Update

Welcome and Introductions

Cheryl Newton, Acting Deputy Regional Administrator welcomed everyone to the EPA office, in particular acknowledging the participation of elected tribal officials. Acting Regional Administrator Robert Kaplan had planned to attend the R5TOC meeting but was required to travel to EPA Headquarters for a meeting of all Regional Administrators.

Doug Cox provided an invocation for the meeting. R5TOC Co-Chair Mark Parrish also welcomed the group indicating it was an honor to represent the tribes. He recognized all the good work that is occurring in Indian country. Elected officials present at the meeting were introduced.

Presentation of the Taimi Lynne Hoag Award for Environmental Stewardship

C. Newton provided some history on the creation and purpose of the Award. This year marks the 14th year that the Award has been presented. M. Parrish presented the Award to John Coleman and asked Jim Zorn to provide some remarks. J. Zorn recognized John's work has given a voice to those who don't have a voice (the four-legged, swimmers, flyers, wild rice, etc.) and has been an excellent scientist. Tina Van Zile related how John was always supportive of the Sokaogon Chippewa Community during their concerns with the proposed Crandon Mine. Tribes had great comfort knowing he was on their side as they interacted with federal agencies. John thanked the R5TOC and recognized the generosity of those who nominated him. He spoke on the importance of recalling who helped make each of us who we are, how the tribal staff in Region 5 has been inspirational, support that EPA has provided to the tribes, and his gratitude to the staff at the Great Lakes Indian Fish and Wildlife Commission.

Region 5 Tribal Operations Committee Administrative Business

Via telephone, Levi Brown provided a report from the National Tribal Committee (NTC). He thanked the tribes in Region 5 that completed the national budget templates. Information from 20 tribes in Region 5 was compiled and submitted to the NTC for use in their national budget document. On April 06, 2017, the NTC met with Administrator Pruitt. The NTC requested that the Administrator reaffirm the 1984 Indian Policy. While the Administrator was not familiar with the Policy, he committed to following up. The NTC also raised the importance of the Indian Environmental General Assistance Program funding to the tribes. The Administrator expressed interest in attending the next NTC meeting held in Indian country. The NTC would like to co-locate the next NTC and ECOS meetings.

There is a common goal of protecting grant funds and the two organizations could identify other common interests. Action Item: L. Brown will share the NTC Chair Report from the NTC meeting with the Tribal and International Affairs Office (TIAO) and the Tribal Caucus.

A copy of the meeting summary from October 2016 was included in the meeting packet. A motion was made by D. Cox and seconded by Chris Korleski to accept the meeting summary. No objections were stated and the meeting summary was approved as presented.

Anthony Greenwater reviewed the eight items listed in the R5TOC Action Item Tracking Matrix. Nancy Schuldt suggested that the 2016 initiative to increase tribal consultation on infrastructure projects could be used as a starting point for addressing federal agency consultation with tribes related to the Enbridge Consent Decree action item.

M. Parrish provided a report from the Tribal Caucus meeting that was held on April 05, 2017. Primary discussion items included:

- Self-governance

The Tribal Caucus believes that this initiative could both assist the tribes and alleviate administrative burdens for EPA. The Great Lakes Restoration Initiative (GLRI) tribal capacity funding should be seen as a model that could be enhanced with other programs. Seth Moore encouraged the Agency to continue to explore. Self-governance is most respectful of tribal sovereignty to address tribal priorities. Both short term and long term (statutory changes) actions should be identified.

C. Newton reiterated that currently EPA only has statutory authority for GLRI program. She also indicated that EPA is willing to look at opportunities to streamline the funding process, and wants to ensure that all have an understanding of what is possible. Tribes are encouraged to avail themselves of the current opportunities for flexibility that exist such as performance partnership grants, and to use other forums to seek the changes to the EPA funding programs.

Jeff Mears emphasized that the views of the new Administration are not known so tribes should use an abundance of caution as they move forward on this initiative. M. Parrish suggested that the Multi-Agency MOU Work Group could be a forum for discussion. The TIAO can encourage the Work Group to schedule a meeting in the near future.

- Leadership meetings

The Tribal Caucus discussed the format for meetings and EPA responsibilities. It was suggested that EPA representatives could make additional trips to Indian country. C. Newton said the Region is committed to continuing to encourage EPA senior management and staff to make visits to Indian country. These visits may be impacted by changes to the EPA budget.

- Representation on National Tribal Committee

The Tribal Caucus was concerned that existing Tribal Caucus Bylaws may have limited current representatives from joining NTC leadership team.

- Tribal Liaison position in Region 5

The Tribal Caucus would like EPA to look at other options for providing additional liaison services, particularly in Minnesota and Wisconsin. One option would be for EPA to provide

funding for a tribal staff person to serve as an EPA Liaison for a one-year term. The one-year positions could rotate among interested tribes. C. Newton indicated that the Region would be open to discussing options for the liaison function but there must be appropriate personnel authorities to allow a particular option.

Tinka Hyde reported that EPA and the Bureau of Indian Affairs (BIA) will hold a meeting on May 24, 2017, at the BIA office in Ashland, Wisconsin to discuss the planning, budgeting, and consultation processes under GLRI. She also indicated that the Agency is planning for the non-competitive GLRI Tribal Initiative but this will be dependent on the budget established by Congress. S. Moore encouraged that GLRI include a tribal-specific priority and that there needs to be a mechanism for tribes to receive funding under GLRI Focus Area 1 (toxic substances and areas of concern).

2017 Transition at EPA Region 5

C. Newton provided a presentation on the current status of the transition to the new Administration, including new senior officials, policies, and budget priorities.

Appointments

- EPA has a new Administrator, Scott Pruitt, formerly the Oklahoma attorney general.
- Administrator Pruitt is still filling out the top-level of political appointees including the chief of staff and several other advisors. To date no nominees for deputy administrator or any of the assistant administrators.
- No regional administrators have been appointed, so Bob Kaplan is still acting Regional Administrator for Region 5.

Regulatory Activity

- The President has made clear his desire to reduce the number of federal regulations.
- Executive Order on Reducing Regulation and Controlling Regulatory Costs requires that any new regulation be offset by the repeal of two existing regulations.
- Executive Order on Enforcing the Regulatory Reform Agenda directs all agencies to identify any regulations that can be repealed or modified, based in part on whether they eliminate jobs or impose excessive costs.
- Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule which directs rescission or revision of the Waters of the U.S. Rule.

- Executive Order on Promoting Energy Independence and Economic Growth, which among other things, starts the process of suspension, revision, or rescission of the Clean Power Plan.

Budget

- At any time, EPA is working on three different budgets; steps in budget process were outlined.
- Region 5 FY2016 appropriation was \$1.035 billion; 53% was state and tribal grant (STAG) funding, 39% environmental program management (EPM) funding, which equates to 53% of regional funding in grants and about 14% in payroll.
- On March 16, President released a “skinny” budget for FY 2018 which is a blueprint of a more detailed budget proposal to be issued in May 2017. The skinny budget proposed a 32% cut to EPA’s budget, including a reduction of 3,200 positions
- Administrator Pruitt has stated that he is “committed to leading the EPA in a more effective, more focused, less costly way as we partner with states to fulfill the agency’s core mission.”
- EPA doesn’t have an FY17 budget; since October 1 the Agency has been operating under a continuing resolution which allows EPA to operate under FY 2016 budget levels.
- Current continuing resolution ends on April 28, and what happens then is unknown – possible government shutdown, reductions to the FY 2017 budget, another continuing resolution for the remainder of the year.

Sharon Green indicated that even if a government shutdown occurs, tribes can continue to request reimbursement under obligated awards through the ASAP system. Region 5 is currently drafting letters that will be sent to grantees in the event of a government shutdown.

M. Parrish requested that Region 5 consider holding tribes harmless in the event of any budget reductions.

Enbridge Consent Decree Update

The R5TOC meeting packet included an *Enbridge Energy Limited Partnership Proposed Consent Decree: Status Update*.

Karen Peaceman reported that a response to comments and a motion to enter the proposed Consent Decree (CD) was filed with federal Court on January 19, 2017. The following changes were made from the original CD:

- Clarified that there is no mandate to replace Line 3 without necessary approvals, and no requirements for any authority to expedite review of Enbridge's replacement proposal
- Barred Enbridge from re-using decommissioned Line 3
- Updated a list of maximum operating pressures for the Lakehead pipelines and procedures to determine the depth and profile of certain corrosion defects

As of the date of the R5TOC meeting, the Court has not approved the CD. However, Enbridge has begun to implement certain measures including:

- Hiring an independent third party to provide expert technical advice to EPA
- Submitting a plan to investigate whether biota attached to the dual pipelines in the Straits of Mackinac impact pipeline integrity
- Submitting a plan for hydrostatic testing of Line 5
- Planning for training exercises to practice response to a major oil spill

EPA is posting CD deliverables, reports from the independent third party, and EPA comments on documents at <https://www.epa.gov/enbridge-spill-michigan/revised-enbridge-consent-decree>.

The Tribal Caucus provided the following input:

- Is EPA satisfied with the proposed hydrostatic testing plan?
- Tribes are not members of the public and tribal treaty rights should not be negotiated away. What is EPA doing to coordinate with tribes?
- At least one tribe has annual operation and maintenance meetings with Enbridge for the pipelines that traverse its reservation and this might be a useful approach for other tribes.
- It is likely too optimistic to assume that Enbridge will operate appropriately, so there should be other mechanisms in place besides good faith.
- In negotiating the CD, EPA has placed tribal treaty rights at risk.
- Tribes do not want incremental safety improvements; they want the pipeline to be shut down.
- Cumulative degradation of treaty resources (for example wildlife corridors) should be recognized and addressed not just catastrophic failure.

K. Peaceman responded that the action against Enbridge is still in litigation, and as tribes are not parties to the CD EPA cannot consult on the matter. However, EPA wants to coordinate with the tribes through the R5TOC meetings and other mechanisms. Region 5 understands the tribal position concerning potential impacts to tribal treaty rights. The Agency does not have the authority to shut down the pipeline, but will continue to closely monitor compliance with the 185-page CD.

Reports from Tribal Partnership Groups

The R5TOC meeting packet included the following materials provided by the Region 5 representatives to the Tribal Partnership Groups: *National Tribal Waste and Response Assistance Program (TWRAP): R5TOC Tribal Caucus Update*; *R5TOC Tribal Caucus Update on National EPA-Tribal Science Council (TSC) Activities and National Advisory Council for Environmental Policy and Technology (NACEPT) Activities*; *Environmental Protection Belongs to the Public: A Vision for Citizen Science at EPA*; *National Tribal Air Association (NTAA) Spring Report, March 2017*; *National Tribal Water Council (NTWC): R5TOC Tribal Caucus Update*.

Victoria Flowers provided an update from the TWRAP. In February 2017, TWRAP met with the Office of Land and Emergency Management, Office of Environmental Justice, and the Office of Enforcement and Compliance Assurance. Some key issues include: developing a tribal priorities document, using the EJ2020 Action Plan as a tool to press for more funding, and changing the definition of tribes under the Resource Conservation and Recovery Act in order to be able to receive federal authorities. The Tribal Lands Forum will be held in August 2017 in Tulsa, Oklahoma.

J. Mears provided an update on the TSC and NACEPT. The TSC continues to host monthly science seminars and expects to hold its next face-to-face meeting in June 2017 in conjunction with the R8TOC meeting. In December 2016, NACEPT submitted a report to EPA on the use of citizen science in EPA's work.

Brandy Toft provided an update on the NTAA. The Executive Council held a meeting in February 2017 with representatives from EPA, Department of Housing and Urban Development, American Lung Association, and National Association of Clean Air Agencies. The National Tribal Forum on Air Quality is scheduled for early May 2017 in Tucson, Arizona. NTAA priorities include: Volkswagen Settlement, preparing policy response kits for tribal use, and tracking possible air quality policy changes at EPA. Prior to the start of the 2017 Tribal Environmental Program Management Conference a Tribal Mercury Workshop was held and approximately 61 participants signed in to start the day.

N. Schuldt provided an update on the NTWC. Administrative support for NTWC will be provided by the Institute for Tribal Environmental Professionals and EPA Headquarters anticipates finalizing a 5-year work plan in June 2017. NTWC is continuing to have monthly conference calls, but the absence of the administrative support contract has prevented a meeting with EPA leadership. The group is also working with EPA to plan the upcoming advanced tribal water quality standards training scheduled for October 2017. Kathleen Brosemer provided the R5TOC with copies of a one-page summary of "Recommendations for consideration by Tribal Leaders to infrastructure consultation, Autumn 2016."

Back Forty Mine

The R5TOC meeting packet included a brochure entitled "Menominee Nation's Opposition to the Proposed Back Forty Mine." D. Cox provided a PowerPoint presentation on the Aquila Resources Inc. Back Forty Mine. The proposed project would be an open pit mine in Lake Township, Michigan located approximately 150 feet from the Menominee River which is the border between Michigan and Wisconsin. The mine has an estimated life of 7-16 years and would pursue zinc, gold, and other minerals.

To date, Aquila Resources has received a mining permit, air emissions permit, and surface water discharge permit from the Michigan Department of Environmental Quality (MDEQ). A wetlands permit application is pending at MDEQ. There are currently no federal permits required at the site.

For a number of reasons, the Menominee Indian Tribe of Wisconsin (MITW) opposes the project: the proposed mine would be in the Menominee Creation Story Area, culturally significant sites (burial mounds, raised agricultural beds, etc.) have been documented in the area, general environmental concerns about water quality and impacts to fish and wildlife. Actions underway by the MITW include: education (website, media/public education plans, political engagement); legal (filing appeals to state permits, challenging MDEQ wetland program authorization); networking and fundraising; and community grassroots efforts. The Tribe does not have technical capacity in-house to sufficiently review permit materials.

Revisit R5TOC Organizational Structure

A. Greenwater highlighted the October 2016 R5TOC meeting hosted by the Little River Band in conjunction with a meeting of the United Tribes of Michigan as one that was very fruitful and involved a number of tribal leaders. The next R5TOC meeting will be in the summer of 2017 and hosted by the tribes in Minnesota. D. Dirlam reported that the Midwest Alliance of Sovereign Tribes is meeting in June at Mille Lacs Band and the Minnesota Indian Affairs Council is scheduled to meet in May and then likely in late July/early August 2017.

A. Greenwater indicated that the Region 5 Tribal Caucus Bylaws (a copy was included in the meeting packet) can be revised by the Tribal Caucus. Revisions can include the length of term for the NTC representatives. The Tribal caucus reported that it would like to work towards adopting revised Bylaws by April 2018. Action Item: A. Greenwater will provide the Tribal Caucus with copies of RTOC charters/bylaws from other regions.

The Tribal Caucus was asked for input on whether a leadership roundtable should continue to be held along with each R5TOC meeting. All those who spoke were in favor of continuing both meetings, and offered the following observations on the leadership roundtable:

- May allow for discussion of issues that are not on the R5TOC agenda
- One-on-one time with the Regional Administrator is important
- Opportunity to foster a relationship with the Administration
- Effective forum to discuss particular issues but should not be used for off the record R5TOC conversations
- Leaders are welcomed at the R5TOC meeting but may not necessarily feel comfortable; they may be more inclined to attend the leadership roundtable
- Staff should not be prohibited from attending if representing their leaders
- Opportunity to speak from the heart, which may not be appropriate at the R5TOC meeting

C. Newton acknowledged the input provided by the Tribal Caucus and recognized that Region 5 will have a new Regional Administrator with his/her own perspective.

A. Greenwater announced that the next R5TOC Tribal Caucus conference call is scheduled for Wednesday, April 19, 2017 at 9:00 am CT/10:00 am ET.

E. Chapman requested that the Region provide an annual report on the tribal program as it did in FY 2016. It was useful when he needed to discuss activities in Indian country. Action Item: A. Greenwater indicated that the request for an annual Region 5 tribal program report will be placed on R5TOC Tribal Caucus conference call for discussion.

American Indian Environmental Office (AIEO) Update

Via telephone, Felicia Wright, Acting AIEO Director provided a report from EPA Headquarters. JoAnn Chase, as a political appointee resigned in January 2017 and F. Wright is serving as Acting Director until the Administration appoints a permanent Director. The Office of International and Tribal Affairs recently met with Administrator Pruitt to introduce him to the Agency's Indian program and key roles and priorities. The Administrator conveyed that "growing" the economy is important and that the Agency can be pro-energy and pro-environment. He emphasized the need to support infrastructure such as wastewater and drinking systems, and perhaps solid waste management facilities. The Administrator has also met with the NTC Executive Council, expressing a commitment to attend an upcoming meeting of the National Tribal Operations Committee. The NTC Executive Council conveyed the importance of funding under IEGAP.

F. Wright also outlined the current priorities of the Office.

- Direct implementation of EPA programs to protect human health and the environment in Indian country and how this relates to maintaining a strong workforce at EPA
- Tribal implementation of federal environmental programs and the importance of support for "treatment as state" and capacity-building activities (focus on measurements and the use of grant funds, as well as the use of EPA-Tribal Environmental Plans/Tribal Environmental Agreements to link tribal goals to funding)
- Continue the momentum from the 2011 Tribal Consultation Policy to encourage government-to-government consultation between EPA and the tribes

AIEO is also specifically working on implementing the Guidance for Discussing Treaty Rights, the EPA-IHS MOU reaffirming federal roles in solid waste management in Indian country, Clean Air Act training, the VW enforcement settlement, developing a template for tribes to use to apply for authorities under the Clean Water Act TMDL Rule, conducting an advanced tribal water quality standards training in October 2017, and preparing to brief the new Administrator on the 1984 EPA Indian Policy and the Agency's trust responsibility and relationship with tribes.

EPA/Federal Representatives	Tribal Representatives
Cheryl Newton, Acting Deputy Regional Administrator	Mark Parrish, R5TOC Co-Chair
Anthony Greenwater, Tribal and International Affairs	Doug Cox, R5TOC representative WI
Tinka Hyde, Great Lakes National Program Office	Seth Moore, R5TOC representative MN
Edward Nam, Air and Radiation Division	Kathleen Brosemer, R5TOC representative MI
Chris Korleski, Water Division	Ron "Tehassi" Hill, R5TOC representative WI
Ignacio Arrázola, Land and Chemicals Division	Deb Dirlam, R5TOC representative MN
Margaret Guerriero, Superfund Division	Sally Kniffen, R5TOC alternate representative MI
Rett Nelson, Office of Regional Counsel	Jeff Mears, R5TOC alternate representative WI

Felicia Wright, American Indian Environmental Office (via telephone)	Levi Brown, R5 alternate NTC representative (via telephone)
Amy Sanders, Resources Management Division	Eric Chapman Sr., Lac du Flambeau Band
Jennifer Manville, Tribal and International Affairs	Dylan Jennings, Bad River Band
Karen Peaceman, Office of Regional Counsel	Victoria Flowers, Oneida Nation
Tina Davis, Tribal and International Affairs	Nancy Schudlt, Fond du Lac Band
Ella Mulford, Tribal and International Affairs	Brandy Toft, Leech Lake Band of Ojibwe
Darrel Harmon, Office of the Regional Administrator	Kyle Boone, Pokagon Band
Barbara Wester, Office of Regional Counsel	Brett McConnell, Lac Courte Oreilles Band
Rosita Clarke, Superfund Division	Natalene Cummings, Forest County Potawatomi
	Jim Zorn, Great Lakes Fish and Wildlife Commission (GLIFWC)
	Gabe Miller, Prairie Island Indian Community
	Nathan Podany, Sokaogon Chippewa Community
	Patricia Moran, Lac du Flambeau
	Tara Geshick, Bois Forte Band
	Ed Klodziejski, Bad River Band
	Matt Rogotede, Leech Lake Band
	Celeste Hockings, Lac du Flambeau Band
	Kristen Hanson, Lac du Flambeau Band
	Jennifer Kanine, Pokagon Band
	Gabrielle Holman, Bois Forte Band
	Shane Bowe, Red Lake Band
	Michael Arce, Oneida Nation
	Jim Snitgen, Oneida Nation
	Shaughn Barnett, Little River Band
	Tina L. VanZile, Sokaogon Chippewa
	Vallen Cook, Grand Portage Band
	Ann McCammon Soltis, GLIFWC
	Esteban Chiriboga, GLIFWC
	Kevin Gunderson, Ho-Chunk Nation
	Rob Voss, Ho-Chunk Nation
	Naomi Tillison, Bad River Band
	Nathan Kilger, Bad River Band
	Grant Poole, Pokagon Band
	Carey Pauquette, Saginaw Chippewa Tribe
	Linda Nguyen, Red Cliff Band
	Stephanie Kozich, Keweenaw Bay Indian Community
	Melissa Witkowski, Grand Traverse Band
	Allison Smart, Little River Band
	Josh Beaulaurier, Little River Band
	Brianna Knudsen, Little River Band
	Tom Shepard, Little River Band
	Heather Westra, Prairie Island Indian Community
	Jeremy Bloomquist, St. Croix
	Matt Malinianek, Ho-Chunk Nation
	Perry Bunting, Mille Lacs Band
	Jonathan Aylward, Grand Traverse Band

	Jessica Strand, Bad River Band
	John LeBlanc, Red Lake Band
	Aubrey Macroux-LeDuc, Bay Mills Indian Community